

Summary of Hearing Examiner Recommendation

MCNEILL SUBDIVISION
by Banks Engineering on behalf of Habitat
for Humanity of Lee and Hendry Counties

Request: Rezone from Residential Planned Development (RPD) and Residential Single-Family (RS-1) to Residential Multiple-Family (RM-2).

Location: 1268 & 1270 McNeill Road
(North of Pondella Road & Orange Grove Boulevard)

North Fort Myers Planning Community

District 4

Size: 10.54 \pm Acres

Recommendation: Approve

Public Concerns: Traffic, Noise, Oversupply of Affordable Housing





Hearing Examiner Remarks:

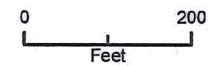
The proposed RM-2 zoning is appropriate given the property's location in a residential area proximate to community facilities and urban services.

Detailed recommendation follows

REZ2018-00006 Future Land Use



Legend

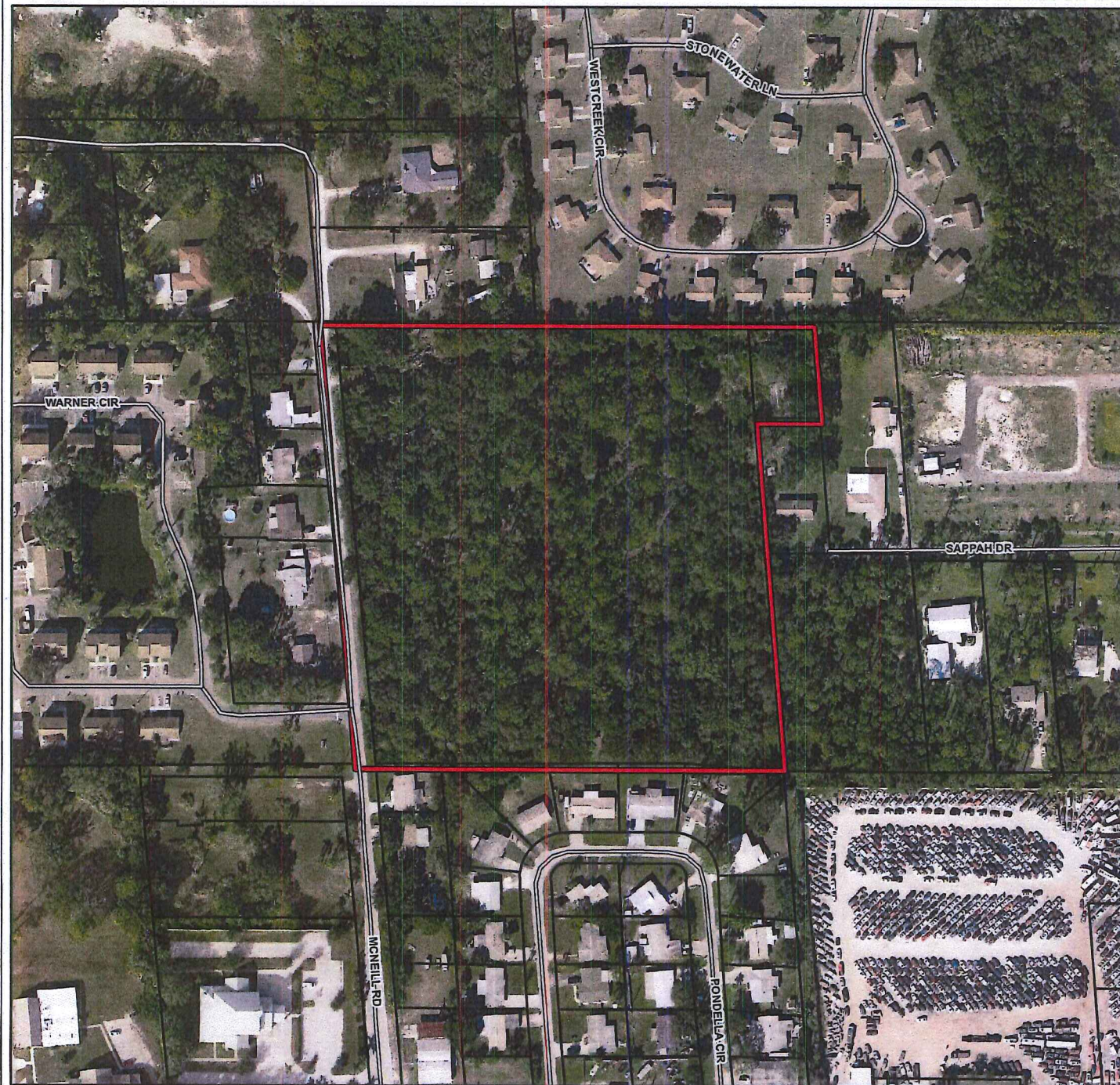
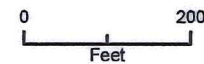
-  Subject Parcel
-  Parcel Boundary
-  Suburban
-  Sub-Outlying Suburban



**REZ2018-00006
AERIAL**

Legend

-  Subject Parcel
-  Parcel Boundary



OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA
HEARING EXAMINER RECOMMENDATION

REZONING: REZ2018-00006

Regarding: **MCNEILL SUBDIVISION**

Location: 1268 & 1270 McNeill Road
(North of Pondella Road & Orange Grove Boulevard)

North Fort Myers Planning Community
(District 4)

Hearing Date: August 30, 2018

I. Request:

Rezone 10.54 acres from Residential Planned Development (RPD) and Residential Single-Family (RS-1) to Residential Multiple-Family (RM-2).

The property is legally described in Exhibit A.

II. Hearing Examiner Recommendation:

Approval.

III. Discussion:

The Hearing Examiner serves in an advisory capacity to the Board of County Commissioners ("Board") on applications to rezone property.¹ In exercise of this duty, the Hearing Examiner accepted testimony and evidence for the application to rezone property to the Residential Multiple-Family (RM-2) zoning district.

In preparing a recommendation to the Board, the Hearing Examiner must consider the Lee County Comprehensive Plan ("Lee Plan"), the Land Development Code ("LDC"), and other applicable County regulations with the facts presented in a rezoning request.² Specifically, the Hearing Examiner must find that the request is compatible with surrounding uses and complies with Lee Plan and LDC requirements relating to such items as transportation facilities, natural resources, and urban services.³ The Hearing Examiner's recommendation must be based on competent and substantial evidence.⁴

Discussion supporting the Hearing Examiner's recommendation of approval follows below.

¹ LDC 34-145(d)(1)a.

² LDC 34-145(d)(3).

³ LDC 34-145(d)(4).

⁴ Lee Co. Admin. Code 2-6, 3.3(A)(2); LDC 34-83(a)(4)(a)(1)(a).

Request Summary

The applicant seeks to rezone two parcels from Residential Planned Development (RPD) and Residential Single-Family (RS-1) to Residential Multiple-Family (RM-2). The 10.54-acre property is located north of the intersection of Pondella Road and Orange Grove Boulevard.

The RPD portion of the property is currently approved for a 150-resident adult congregate living facility.⁵ The RS-1 portion has historic zoning approval for a child care nursery.⁶ The two parcels are contiguous and ripe for infill development.

The applicant declared its intent to construct an affordable housing development with 36 single family residences and has a companion development order under review.⁷ However, RM-2 is a "conventional" zoning district so it is not possible to impose conditions or restrict approval to a particular use. Rather, the LDC will govern permitted uses.⁸ Deviations from LDC requirements are available by variance.⁹

The Department of Community Development staff recommended approval of the request, finding that the proposed RM-2 zoning satisfied LDC review criteria.¹⁰

Character of the Area

The property lies north of Pondella Road and east of McNeill Road in North Fort Myers. Mostly non-residential uses line Pondella Road while residential uses dominant McNeill Road. Affordable housing developments are proximate to the site.

Lee Plan Consistency

All rezonings must be consistent with the goals, objectives, policies, and standards in the Lee Plan.¹¹

The property is within the Suburban future land use category and the North Fort Myers Planning Community.¹² Properties with a Suburban designation are to consist of predominantly residential areas.¹³ This category aims to protect existing or emerging residential neighborhoods.¹⁴

Rezoning the property to RM-2 is consistent with the Suburban classification. The purpose of multiple-family districts is to designate suitable locations for residential uses.¹⁵ RM-2 zoning permits a variety of housing types.¹⁶ Existing residences surround the property.

⁵ ZAB-86-36.

⁶ Z-75-149.

⁷ See Staff Report, Attachments E and F.

⁸ LDC 34-714.

⁹ LDC 34-621 (a)(2).

¹⁰ See Staff Report.

¹¹ LDC 34-491(a).

¹² Lee Plan Map 1, pg 1-2.

¹³ Lee Plan Policy 1.1.5.

¹⁴ *Id.*

¹⁵ LDC 34-711.

¹⁶ LDC 34-714.

Given the size of the property and its Suburban designation, the maximum permitted density is 63 dwelling units.¹⁷ The applicant proposes to develop 36 units, significantly below the permitted density.¹⁸ There is a companion development order pending review which reflects 36 single family units.¹⁹

The request is consistent with Lee Plan directives regarding development location.²⁰ The property is within a designated Future Urban Area. Rezoning to RM-2 promotes contiguous and compact growth patterns by populating infill development. Necessary infrastructure is in place to support the proposed request.²¹

Rezoning the property to permit an affordable housing community advances Lee Plan objectives for North Fort Myers.²² Development of affordable housing is encouraged on properties located:²³

- Within the Intensive Development, Central Urban, and Urban Community categories;²⁴
- Where central water and sewer service are available;²⁵ and
- Within walking distance of mass transit, commercial and personal services, and parks and recreation facilities.²⁶

Meeting housing needs for Lee County residents generally is a broader goal articulated in the Lee Plan.²⁷ A specific directive is to provide decent, safe, and sanitary housing in suitable neighborhoods at affordable costs.²⁸ It is a priority to increase supply of affordable housing while avoiding concentrations of very-low and low-income households.²⁹

Some neighbors voiced concern that developing this site as an affordable housing project would result in a concentration of very-low and low-income households. They pointed to existing developments in the immediate area to support this claim. However, staff provided significant testimony that the requested rezoning is consistent with the Lee Plan and does not create a “concentration” of affordable housing in violation of this policy.³⁰

¹⁷ Lee Plan Policy 1.1.5.

¹⁸ See Staff Report (pg 6).

¹⁹ See Staff Report.

²⁰ Lee Plan Objective 2.1, Policy 2.1.1.

²¹ The property has direct access to McNeill Road and is served by central water and sewer. See Staff Report (pg 4).

²² Lee Plan Objective 30.1.

²³ Lee Plan Policy 30.1.4.

²⁴ The property is within the Suburban category; however, it has the same density range as Urban Community.

²⁵ Both central water and sewer service are available to the site. See Staff Report Attachment D; Applicant's Ex. A (pg 7-8), Ex. 1 (Slide 17).

²⁶ There are a host of services and facilities proximate to the site. Lee Tran Route 595 runs along Pondella Road and Route 70 runs along Orange Grove Boulevard. There are several stops within walking distance of the property. See Applicant's Ex. 1 (Slides 14-16).

²⁷ Lee Plan Goal 135, Objectives 135.1 and 135.4, Policies 5.1.8, 135.1.1, 135.1.2, 135.1.5, 135.1.8, 135.4.1.

²⁸ *Id.*; Lee Plan Goal 135.

²⁹ Lee Plan Objective 135.4, Policy 135.4.12.

³⁰ See Staff Report (pg 6); Testimony of Anthony Rodriguez (*explaining there is sufficient market rate housing in the overall area to provide an appropriate mix of housing, pointing to overwhelming Lee Plan recognition of need of affordable housing, etc.*).

Urban Services

Properties proposed for rezoning must be served by urban services if located in a Future Urban category.³¹

The site is located near an established corridor with access to urban services and infrastructure.³² Public water and sanitary sewer services are available to serve the property.³³ The North Fort Myers Fire Station, Lee County EMS, and Lee County Sheriff's Office provide services to the area.³⁴

Transportation Facilities

Rezoning requests must demonstrate sufficient access to support the proposed development and show any expected impacts on transportation facilities will be addressed by existing County regulations.³⁵

The property has direct access to McNeill Road, a two-lane county-maintained roadway.³⁶ McNeill Road intersects with Pondella Road, a county-maintained arterial road.³⁷

There is sufficient access to the property and staff did not note any anticipated traffic concerns with the requested rezoning.³⁸ The project will be integrated with adjacent and nearby development by means of automotive, transit, and pedestrian connections.³⁹ Any impacts to transportation facilities will be addressed at the time of local development order review.

Environmental/Natural Resources

Requests to rezone may not adversely affect environmentally critical or sensitive areas or natural resources.⁴⁰ Future development must comply with LDC standards for open space, landscaping and buffering.

Public Comment

Several members of the public spoke. Some supported the request citing the need for affordable housing and pointing to other Habitat for Humanity projects. Others opposed the rezoning based on concerns of increased traffic, noise, and an oversupply of affordable housing.

³¹ LDC 34-145(d)(4)(a)(1)(g).

³² Lee Plan Policy 2.2.1.

³³ Lee Plan Goal 4, Standards 4.1.1 and 4.2.1.

³⁴ North Fort Myers Fire Station 2 is about one mile from the site while Lee County EMS Medic 7 and Lee County Sheriff's Office North District are about two miles from the property. See Staff Report (pg 4); Applicant's Ex. a (pg 6) and Ex. 1 (Slide 14).

³⁵ LDC 34-145(d)(4)(a)(1)(d)-(e).

³⁶ Staff Report (pg 4).

³⁷ McNeill Road becomes Orange Grove Boulevard south of that intersection.

³⁸ See Staff Report (pg 7). Conventional rezoning requests are not required to submit a Traffic Impact Study.

³⁹ The applicant is constructing a sidewalk along McNeill Road to Pondella Road. Pondella Road and Orange Grove Boulevard are improved with pedestrian facilities and served by Lee Tran.

⁴⁰ LDC 34-145(d)(4)(a)(1)(f).

Conclusion

The Hearing Examiner concurs with staff's analysis and recommendation of approval. The proposed RM-2 zoning designation is appropriate given the property's location in a residential area proximate to urban services.

The requested RM-2 zoning meets the LDC criteria for approval because it is consistent with the future land use designation, compatible with the surrounding area, and will develop consistent with standards set forth in the LDC.

IV. Findings and Conclusions:

Based on the testimony and exhibits presented, the Hearing Examiner recommends approval of the rezoning to RM-2 and makes the following findings and conclusions:

A. The RM-2 zoning request:

1) Complies with the Lee Plan. See Lee Plan Vision Statement Paragraph 19; Map 1 (pgs 1-2); Goals 2, 4, 5, 135; Objectives 2.1, 2.2, 5.1, 135.4; and Policies 1.1.5, 1.7.6, 2.1.1, 2.1.2, 2.2.1, 2.2.2, 135.1.2, 135.1.5, 135.1.8, 135.4.1, 135.4.6;

2) Meets the LDC and other applicable County regulations. See Lee Plan Goal 5, Objective 5.1, Policies 5.1.3, 5.1.5, 5.1.6, 5.1.8; LDC 34-711, 34-714, 34-715;

3) Is compatible with existing or planned uses in the surrounding area. See Lee Plan Objectives 2.1, 2.2, and Policies 1.1.5, 1.7.6, 2.1.1, 5.1.5;

4) Will provide access sufficient to support development intensity;

5) Roadway impacts will be addressed by County regulations. See Lee Plan Policies 2.2.1, 39.2.2;

6) Will not adversely affect environmentally sensitive areas or natural resources. See Lee Plan Objective 77.1; and

7) Will be served by urban services and infrastructure consisting of public water and sewer, paved streets, transit, police, fire, and emergency services. See Lee Plan Maps 6 – 7, Objectives 2.1, 2.2, 4.1, Policies 2.2.1, 2.2.2.

Date of Recommendation: November 6, 2018.



AMANDA L. RIVERA
Deputy Hearing Examiner

Office of the Lee County Hearing Examiner
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398

Exhibits to Hearing Examiner's Recommendation

Exhibit A Legal Description and Vicinity Map
Exhibit B Exhibits Presented at Hearing
Exhibit C Hearing Participants
Exhibit D Information

Exhibit A

LEGAL DESCRIPTION AND VICINITY MAP

BANKS ENGINEERING

Professional Engineers, Planners & Land Surveyors

DESCRIPTION OF A

Applicant's Legal Checked
by RTM 6/18/2018

TRACT OR PARCEL OF LAND LYING IN SECTION 4, TOWNSHIP 44 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 44 SOUTH, RANGE 24 EAST, BEING FURTHER BOUND AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 4; THENCE S 89°52'17" E ALONG THE NORTH LINE OF SAID FRACTION AND THE EASTERLY PROLONGATION THEREOF FOR 755.17 FEET, PASSING THROUGH THE NORTHEAST CORNER OF SAID FRACTION AT 655.24 FEET, TO THE NORTHEAST CORNER OF PARCEL ONE AS DESCRIBED IN INSTRUMENT NUMBER 2017000175305 OF THE PUBLIC RECORDS OF SAID LEE COUNTY, FLORIDA; THENCE S 04°36'25" E ALONG THE EAST OF SAID PARCEL FOR 150.17 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL; THENCE N 89°52'17" W ALONG THE SOUTH LINE OF SAID PARCEL FOR 99.93 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL AND AN INTERSECTION WITH THE EAST LINE OF SAID FRACTION; THENCE S 04°36'25" E ALONG SAID EAST LINE FOR 530.54 FEET TO THE SOUTHEAST CORNER OF SAID FRACTION; THENCE N 89°48'48" W ALONG THE SOUTH LINE OF SAID FRACTION FOR 654.66 FEET TO THE SOUTHWEST CORNER OF SAID FRACTION; THENCE N 04°39'36" W ALONG THE WEST LINE OF SAID FRACTION FOR 680.10 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS: 10.54 ACRES, MORE OR LESS

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.

BEARINGS AND DISTANCES ARE BASED ON THE "STATE PLANE COORDINATE SYSTEM" FLORIDA ZONE WEST NAD 83/2011 (CORS), WHEREIN THE NORTH LINE OF THE NORTHWEST QUARTER OF SOUTHWEST QUARTER OF SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 44 SOUTH, RANGE 24 EAST BEARS S 89°52'17" E. THE SCALE FACTOR IS 0.999959921.

DESCRIPTION PREPARED: 4-26-2018.

Richard M. Ritz
RICHARD M. RITZ
REGISTERED LAND SURVEYOR
FLORIDA CERTIFICATION NO. 4009
DATE SIGNED 4-26-2018

RECEIVED
MAY 03 2018

COMMUNITY DEVELOPMENT

REZ 2018-00006

SHEET 1 OF 2

• SERVING THE STATE OF FLORIDA •

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S:\Jobs\82xx\8268\Surveying\Descriptions\8268-BNDY-LGL.doc
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ATTACHMENT J

BANKS ENGINEERING

Professional Engineers, Planners, & Land Surveyors
Serving The State Of Florida

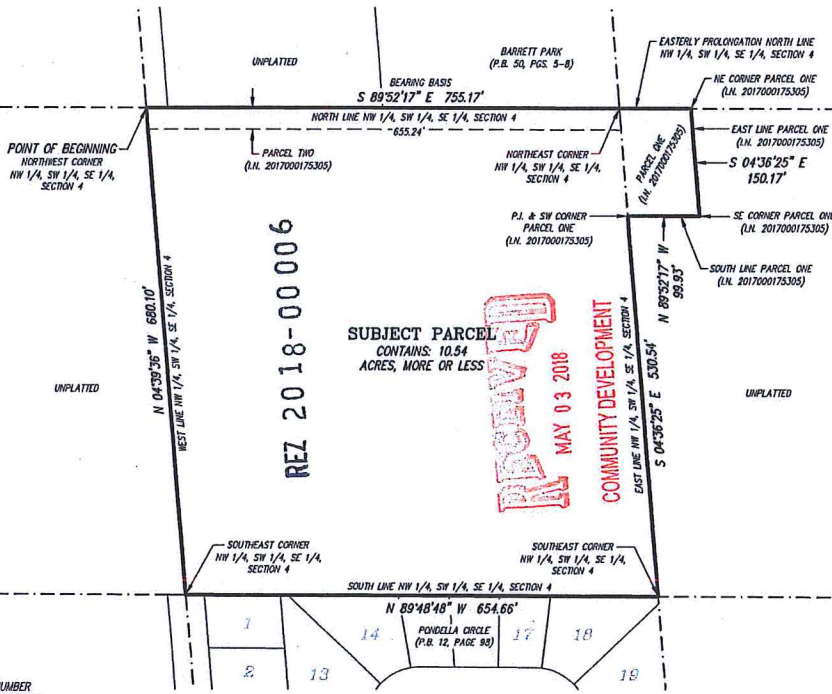
10511 SIX MILE CYPRESS PARKWAY, SUITE 101
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ENGINEERING LICENSE # EB 6469
SURVEY LICENSE # LB 6690
WWW.BANKSENG.COM

SKETCH OF DESCRIPTION

OF
A TRACT OR PARCEL OF LAND LYING IN
SECTION 4, TOWNSHIP 44 SOUTH, RANGE 24 EAST,
LEE COUNTY, FLORIDA



1" = 150'



NOTES:

- 1.) SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.
- 2.) BEARINGS AND DISTANCES ARE BASED ON THE "STATE PLANE COORDINATE SYSTEM" FLORIDA ZONE WEST NAD 83/2011 (CORS), WHEREIN THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 44 SOUTH, RANGE 24 EAST BEARS S 89°52'17" E. THE SCALE FACTOR IS 0.999959921.

SEE SHEET 1 OF 2 FOR COMPLETE
METES AND BOUNDS DESCRIPTION.

**THIS SKETCH OF DESCRIPTION
IS NOT A BOUNDARY SURVEY**

NO. 4009
RICHARD MC RITE
REGISTERED LAND SURVEYOR
FLORIDA CERTIFICATION NO. 4009

- DATE SIGNED: 4-26-2018
- THIS SKETCH OF DESCRIPTION IS NOT VALID
WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED
SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

LEGEND:



- PGS. INDICATES PAGES
P.B. INDICATES PLAT BOOK
14 INDICATES LOT NUMBER
L.N. INDICATES INSTRUMENT NUMBER
P.I. INDICATES POINT OF INTERSECTION

S:\0085\02XX\0268\SURVEYING\DESCRIPTIONS\0268-BNDY-LGL.DOC
S:\0085\02XX\0268\SURVEYING\DESCRIPTIONS\0268-BNDY-SKT.DWG

PREPARED 4-26-2018
SHEET 2 OF 2

REZ2018-00006 ZONING

Legend

-  Subject Parcel
-  Parcel Boundary



0 200
Feet



Exhibit B

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

1. *DCD Staff Report with attachments:* Prepared by Anthony Rodriguez, Principal Planner, dated August 15, 2018 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]

APPLICANT EXHIBITS

- a. *48-Hour Notice:* Email from Kathleen A. Cline, with Pavese Law Firm, to Hearing Examiner, with copies to Neale Montgomery, Esq., John Fredyma, Audra Ennis, Anthony Rodriguez, Kitty Green, Rick Mercer, Stacy Hewitt, Sam Marshall, Ted Treesh, Yury Bykau, & Andy Woodruff, dated Monday, August 27, 2018 11:56 AM (multiple pages – 8.5"x11")
1. *PowerPoint Presentation:* Prepared for Habitat for Humanity, case number REZ2018-00006, McNeill Subdivision, dated August 30, 2018 (multiple pages – 8.5"x11")

Exhibit C
HEARING PARTICIPANTS

County Staff:

1. Anthony Rodriguez

Applicant Representatives:

1. Yury Bykau
2. Kitty Green
3. Stacy Ellis Hewitt
4. Sam Marshall
5. Neale Montgomery, Esq.
6. Andy Woodruff

Public Participants:

1. Louise Bain
2. Marian Briggs
3. Linda Mathews
4. Francine Holt
5. Mitch Hutchcraft

Exhibit D
INFORMATION

UNAUTHORIZED COMMUNICATIONS:

The LDC prohibits communications with the Hearing Examiner or her staff on the substance of pending zoning actions. There are limited exceptions for written communications requested by the Hearing Examiner, or where the Hearing Examiner seeks advice from a disinterested expert.

HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS:

A. The Hearing Examiner will provide a copy of this recommendation to the Board of County Commissioners.

B. The Board will hold a final hearing to consider the Recommendation and record made before the Hearing Examiner. The Department of Community Development will notify hearing participants of the final hearing date. Only Parties and participants may address the Board at the final hearing. Presentation by participants are limited to the substance of testimony presented to the Hearing Examiner, testimony concerning the correctness of Findings of Fact or Conclusions of Law contained in the Recommendation, or allegations of relevant new evidence not known or that could not have been reasonably discovered by the speaker at the time of the Hearing Examiner hearing.

COPIES OF TESTIMONY AND TRANSCRIPTS:

A. Every hearing is recorded. Recordings are public records that become part of the case file maintained by the Department of Community Development. The case file and recordings are available for public examination Monday through Friday between 8:00 a.m. and 4:30 p.m.

B. A verbatim transcript may also be available for purchase from the court reporting service.